



January 17, 2020

VIA ECF

Honorable Wilhelmina M. Wright
United States District Court
334 Federal Building
316 N. Robert Street
St. Paul, Minnesota 55101

Re: *Fair Isaac Corp. v. Federal Insurance Co., et al.*,
No. 16-cv-01054-WMW-DTS (D. Minn. filed April 21, 2016)

Dear Judge Wright:

We write on behalf of Federal Insurance Company and ACE American Insurance Company (collectively, "Federal") to oppose FICO's letter request to file additional summary judgment briefing on Federal's statute of limitations defenses.

FICO's request should be denied. FICO's request is procedurally improper because it is, in substance, a motion to amend the current Scheduling Order under Federal Rule of Civil Procedure 16. Therefore, the proper procedural mechanism for the consideration of this issue is through such a Motion. A letter to this Court cannot suffice and the request should therefore be denied.

Even if the Court interprets FICO's request as a motion under Rule 16, it should not grant this request for two reasons. First, the relief FICO seeks requires a showing of "good cause." *See Mountain Mktg. Grp., LLC v. Heimerl & Lammers, LLC*, No. CV 14-846 (SRN/BRT), 2015 WL 11090345, at *3 (D. Minn. Sept. 21, 2015). FICO cannot show good cause. FICO has already substantively addressed Federal's statute of limitations defenses in prior briefing, and it has not identified any new evidence from the supplemental discovery period that would alter the arguments it has already presented on this topic.

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Granting FICO's request would only provide FICO another opportunity to make the same arguments that it has already presented to the Court on multiple occasions.¹

In denying a similar request, another Court in this District found it significant that "Defendant not only had all responsive discovery about the [allegedly new evidence] in hand, but it *used* that information during summary-judgment briefing" when it "forged ahead, filing its reply brief." *Mountain Mktg. Grp., LLC*, 2015 WL 11090345, at *3 (emphasis original).

Second, FICO has ignored its meet and confer obligations under Local Rule 7.1(a) in its recent submissions to the Court and this trend continues with its current request. (*See* Dkt. 574 at n.1; Dkt. 667; Dkt. 680.) FICO's neglect of its obligations under the Local Rules provides an independent basis to deny its request.

Based on the foregoing, Federal respectfully requests denial of FICO's request.

Sincerely,

/s/ Terrence J. Fleming

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¹ FICO addressed Federal's statute of limitations arguments on the merits in its reply briefing on summary judgment, in its Objection to Magistrate Schultz's Order, filed on September 9, 2019, and in its last letter to the court on this topic on December 3, 2019. (Dkt. 558 at 5 n.3; Dkt. 530 at 12 n.2; Dkt. 680.)